

For purposes of determining jurisdiction for local Retailers' Occupation Tax, the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a GIL).

April 1, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 1, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

I am writing to you on behalf of our client (the Company) which is requesting a General Information Letter (GIL), pursuant to 2 Ill. Admin. Code Sec. 1200.120. The GIL should address the jurisdictional rules for application of local Retailers' Occupation Tax (ROT) as they relate to retail sale transactions in Illinois. GILs respond to inquiries made by taxpayers or their representatives. We understand that GILs discuss tax principles or applications and are not binding on the Illinois Department of Revenue (the IDOR).

FACTS

1. The Business Organization

The Company sells consumer goods at retail. The Company is headquartered in City A, Illinois. The Company has distribution centers and retail stores throughout Illinois. The Company centralized purchasing activities through a subsidiary (the Subsidiary). The Subsidiary purchases goods required by the Company's locations. After purchasing goods, the Subsidiary resells them to the Company. The Subsidiary is also headquartered in City A, Illinois. The Subsidiary has no locations anywhere else.

There are various business reasons for utilizing the Subsidiary to implement a purchasing plan for the Company. First, when the Company created the Subsidiary, it was able to consolidate its purchasing costs into a single entity. By having a separate entity--such as the Subsidiary--handle the Company's purchases, the Company centralizes costs and reduces administrative burdens, which allow the Company to monitor costs in a more efficient manner.

2. Organization of Subsidiary

The Subsidiary has the following attributes:

- It is a separate legal entity designed to supply goods to the Company.
- It has its own FEIN and Illinois Business Tax registration number.
- It leases office space from the Company in City A. The office space is leased at fair market value.
- It is registered to collect the Illinois Retailers' Occupation Tax and remit other applicable state and local taxes.
- It has its own bank account, separate from the Company's account.
- It has its own separate books and records.
- It has entered into contracts of sale with various vendors.
- It has engaged with the Company in an Administrative Services Agreement, which obligates the Company to provide the Subsidiary with administrative support in exchange for a fee.
- It performs all sales-related document-processing functions at its office in City A, Illinois.

3. The Sales Process

Purchases by the Subsidiary are effectuated in the following manner:

- The Company determines the needs of its locations and conveys this information to the Subsidiary.
- The Subsidiary then completes its own purchase order and sends it to a vendor with which it has a contractual relationship. The Subsidiary typically requests that goods ordered from the vendor be drop-shipped directly to a Company location in the state. The Subsidiary also provides its vendors with an Illinois Certificate of Resale.
- The Subsidiary sends from its headquarters in City A an invoice to the Company which causes the Subsidiary to be unconditionally bound to the terms of its sales agreement with the Company.
- The Subsidiary retains all invoices on file in City A.
- The Subsidiary records in its books and records the purchase of goods from the vendor and the subsequent sale of the goods to the Company.
- When the Subsidiary receives an invoice from the vendor, it sends its own invoice to the Company for the amount due plus sales tax. The amount due reflects arm's-length pricing.
- The Subsidiary remits payment to the vendor; the Company remits payment to the Subsidiary.
- The Subsidiary remits to the IDOR the sales tax collected from the Company.

ISSUE

Where does the taxable retail sale take place between the Subsidiary and the Company for purposes of determining the appropriate local sales tax rate to apply to the Subsidiary's sales?

LAW

A. Sales Taxes

1. State Sales Tax

Illinois imposes a Retailers' Occupation Tax (the ROT) on persons engaged in selling at retail within the state tangible personal property. Illinois imposes the tax at the rate of 6.25 percent of gross receipts from retail sales made. 35 ILCS 120/2-10; 86 Ill. Adm. Code Sec. 130.101.

2. Home-Rule Sales Tax

The Illinois Constitution authorizes home-rule units (e.g. municipalities) to exercise certain governmental powers. Sec. 6(a), Art. VII, Ill. Const. A home-rule unit may for example impose taxes upon occupations. Sec. 6(e), Art. VII, Ill. Const. In other words, a home-rule municipality may impose a tax upon all persons engaged in the business of selling at retail within its municipality tangible personal property. The tax rate may be imposed in 0.25 percent increments. 55 ILCS 5/5-1006; 65 ILCS 5/8-11-1.

3. RTA-ROT

The state imposes a Regional Transportation Authority Retailers' Occupation Tax (the RTA-ROT) on persons engaged in selling at retail within certain counties tangible personal property. The RTA-ROT is imposed at rates ranging from 0.25 to 1 percent. 86 Ill. Adm. Code Sec. 320.101(a).¹

B. Order-Acceptance Point

In determining the location of a sale for taxing purposes, the IDOR believes that the single most important element is the location where the seller accepts the customer's purchase order.² 86 Ill. Adm. Code Sec. 270.115(b), (c), 220.115(c), 630.120(b), and 320.115. ST 01-0007-PLR (February 15, 2001), ST 01-0018-PLR (May 16, 2001), ST 01-0003-PLR (February 2, 2001), ST 00-0085-GIL (April 19, 2000), ST 00-0038-GIL (March 6, 2000), ST 00-0020-GIL (January 26, 2000) and ST 91-1008-PLR (December 18, 1991), ST 93-0569-GIL (November 8, 1993) and ST 92-0333-PLR (June 30, 1992). The IDOR will assume, absent clear proof to the contrary, that the seller accepts the purchase order (i.e., makes the sale or executes the contracting action) where the seller receives it from the purchaser. 86 Ill Adm. Code Sec. 270.115(b)(2) and (c)(1). This is the case regardless of whether or not the purchaser takes delivery of the goods at the seller's place of business--provided that the purchaser receives physical possession of the property somewhere in Illinois. If the order acceptance point is in Illinois, the location from which goods are shipped is also not controlling in connection with the imposition of local sales taxes. Id.

The DOR has explained in PLRs and GILs where it considers a purchase order to be accepted for purposes of local sales-tax imposition. In a PLR, a company formed a wholly owned subsidiary to serve as a central procurement source for the company. The subsidiary maintained an office at the company's headquarters. The subsidiary entered into a master sale agreement with the company setting forth the terms and conditions regarding the subsidiary's procurement function for the company. The IDOR found that the tax of the locality where the signed sales agreement was received applies. ST 01-0003-PLR (February 2, 2001).

In a GIL, the IDOR writes that 'if an order is placed at one Illinois location, while the property is located at another Illinois location, the [IDOR] will consider the place at which the order is accepted to govern for purposes of imposition of local taxes. In situations where an order originally placed with one location is processed and accepted at a second location, where the credit-card information is accepted and the sales invoice or other paperwork is generated, the tax rate of the second location would apply.' ST-98-0338-GIL (November 9, 1998).

ANALYSIS

For local Illinois sales-tax purposes, all taxable retail sales between the Subsidiary and the Company occur in City A. A sale takes place where the seller accepts the customer's order. The order-acceptance point for the Subsidiary's sale to the Company occurs in City A because acceptance takes place there, as demonstrated by the following activities:

- The Subsidiary accepts all Company orders through its offices in City A.
- By accepting the sales terms in City A and issuing a sales invoice therefrom, the Subsidiary becomes bound there to the terms and conditions of the sale.
- The Subsidiary retains all invoices in its files located in City A.
- The Subsidiary records the purchase of goods from the vendor and the subsequent sale to the Company in its records located in City A.
- Since the Company wishes to streamline business operations and achieve cost efficiencies by centralizing purchasing activities, the Company clearly intends that the Subsidiary accept orders at its headquarters in City A.

This conclusion is supported by DOR ruling ST 01-0003-PLR. Like the parent in ST 01-0003-PLR, the Company created the Subsidiary to act as the parent's central purchasing company. In both cases, the final action that bound the parties to the sale occurred at the subsidiary's office. After applying the reasoning set forth in ST 01-0003-PLR to the present case, it is clear that all sales transactions between the Company and the Subsidiary take place within City A.

CONTRARY AUTHORITY AND DISCUSSION

No authority contrary to the above-cited authorities is known.

CONCLUSION

Based on the foregoing facts, please confirm that the order-acceptance point for the Subsidiary's taxable retail sales occurs in City A, Illinois. Thus, all appropriate state and local sales tax rates of City A should be imposed on all transactions between the Company and the Subsidiary. This conclusion is consistent with state law and prior DOR rulings.

Your care in responding to our request for a General Information Letter is very much appreciated.

For your general information, please see the enclosed copy of 86 Ill. Adm. Code 270.115 of the Home Rule Municipal Retailers' Occupation Tax for guidance concerning jurisdictional questions.

In general, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

If a purchase order is accepted outside the State, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

From the limited information you included, if the purchase order is accepted in City A, then the local tax of City A is imposed.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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¹ The board of commissioners of any county water commission district may also impose a sales tax on retailers of tangible personal property--the County Water Commission Retailers' Occupation Tax (the CWC-ROT). 70 ILCS 3720/4(a). The county may impose the CWC-ROT at a rate of 0.25 percent of the gross receipts from retail sales. 70 ILCS 3720/4(b). DuPage is currently the only county to impose the tax. All retailers doing business within the DuPage Water Commission district must collect the tax on their sales made there. Information Bulletin FY 88-12, Illinois Department of Revenue (the IDOR) December 1, 1987. 86 Ill. Adm. Code Sec. 630.101 (a).

² "[T]he seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business ... or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule. Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois." 86 Ill. Adm. Code Sec. 270.115(b)(1).